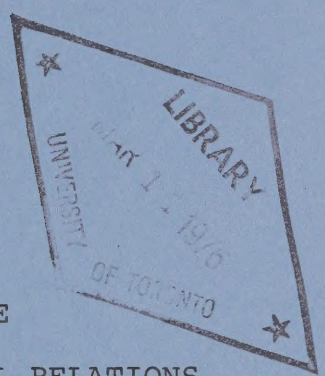
REPORT 2

ON

INSURANCE STUDY



TO

SUPERINTENDENT OF INSURANCE

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

ONTARIO

Submitted by
Douglas H. Carruthers, Q.C.,
October 15, 1974

INTRODUCTION

The purpose of this report is to suggest amendments to cover some of the more obvious deficiences in The Insurance Act as it is now framed. The deficiencies appear in:

(1) sections which are superfluous, inconsistent or incompatible with other existing sections,

(2) sections or subsections which are a duplication,

(3) sections which on their face do not provide for the certainty required in law, and

(4) sections which contain error in law, or which contain matters without apparent common or legal sense.

My comments in this report will purposely not reflect those matters which I will be considering and discussing in my next report. This report is provided for the purpose of enabling you, should you so desire, to make changes in the existing Act so as to allow for greater certainty, clarity and easier application of various sections, both from a practical and legal point of view.

There are many sections I have not touched on in this report. Many of these also need revision of the grounds mentioned above. But they involve policy issues. Until the policy is decided on no reasonable change can be recommended. One cannot choose merely to fix up the sections to reflect current policy because there really is no clear present policy. In a further report to be submitted I will be making recommendations on how to deal with issues of policy or "philosophy", which will involve or require significant changes to be made to the existing Act.

There are other limitations to matters covered in this report. I have not attempted to deal with every section of the existing Act. For instance I have not dealt at all with the part of the Act respecting automobile insurance. I understand that a revision of this part of the Act is already

under consideration within the Department. There are other sections in the Act not considered here because of their complexity. In other instances I felt the subject matter of certain sections was not of great significance. In both cases I did not think the added expenditure of time that would be required to deal with them was appropriate at this stage.

My approach at this time will be to deal with the sections mainly in numerical sequence, where possible making comments about their form and content and their position in the Act relative to other sections. The technical nature of this report and the absence of major policy consideration have suggested that this will be the structure that will be easiest for your staff to deal with.

When a number of policy issues have been settled, it would make sense to give attention to the rearrangement of the Act both for clarity and for ease of future amendments. I have developed some broad concepts on this problem. They are not included in this report because with the policy issues undecided the rearrangement could not be implemented. However, throughout this report some of the sections that will need to be moved have been identified.

This report is confined to those sections of the Act that could be amended without major policy changes in the objects of the Act. The recommendations do, however, embody certain policies on procedures to make the Act more consistent with the current standards for administrative law in Ontario.

CHAPTER 224

THE INSURANCE ACT

INTERPRETATION

1. 4. The term "for compensation" is used to qualify the definition of an Adjuster. I think that term should be expanded to read "for compensation, commission or other thing of value". In this way there is no doubt about the fact that a person who is gaining something doing those things only an adjuster should be doing must be licenced before he can do so.

The definition of"adjuster" excludes "a trustee or agent of the property insured". I do not think that it is possible to have an "agent of the property insured". You can only have an agent of a person who has an interest in the property insured.

1. 5. The term "for compensation" should be expanded in the same manner and for the same reasons I have suggested with respect to the definition of adjuster.

1. 11. The term "for compensation" should be expanded in the same manner and for the same reasons I have suggested with respect to the definition of adjuster.

1. 13. This is the definition of "chief agency". This definition must be considered in conjunction with the definition of "head office" contained in section 1. -27. Both of these terms "chief agency" and

"head office" are used in section 14. 1. In addition to these two terms, the Act also refers to similar terms, namely, Section 7. (1) 1. "principal office in Canada" and there is no definition of that term, Section 30. (1) 3. "chief office in Ontario", and there is no definition of that term, and "office of the chief officer" in Section 97 without there being any definition of that term. It would appear therefore that we have a number of terms that are similar. "Chief agency" is intended to apply to the place of business in Ontario, the licenced insurer having its head office outside of Ontario. "Head office" on the other hand is the place where the chief executive officer of an insurer transacts his business. I don't know how a chief executive or officer transacts his business. He transacts the business of the insurer. In any event, I would think that some clarification can be achieved by using two terms only, namely "principal office in Ontario" and "head office". I would suggest that the term "principal office in Ontario" replace the term "chief office" and be defined as the "place of business where at the principal officer in Ontario of any licenced insurer having its head office out of Ontario is situate". You will note that I have used the term "principal officer", and I have done that in order to do away with or distinguish from other similar phrases

which are now used in the Act and refer to individuals holding high office or a special place with an insurer. I think that the principal officer of Ontario should be distinguished from the chief executive officer of an insurer. For this reason I suggest that "head office" be defined to mean "the place where the chief executive officer of an insurer is situate." I think that is more clear and certainly a better definition than is now contained in the Act.

1. 34. This section provides the definition of the word "insurer". In reading that definition you must of necessity refer to the definition of the term "contract" contained in Section 1. 14. That definition in turn requires you to refer to the definition of "insurance" as defined in Section 1. 30. In my opinion a reading of those three paragraphs causes confusion and is not by any means clear. The confusion stems from the use of the word "undertakes" contained in Section 1. 34. and the word "undertaking" contained in Section 1. 30. The present definition of the word "insurer" is broad enough in my opinion to apply to an individual or corporation who is actually an "agent" or "broker" within the meaning of the Act. I recommend that the definition of the term "insurer" be changed to read as follows:

"34. "insurer" means any person who carries on the business of insurance"

3. This section is a general section, the purpose of which is to give the Superintendent power to obtain evidence through various methods or means. This section, however, does not say how, why, or in connection with what the powers are to be exercised by the Superintendent. I would presume that the section is intended to apply to those other sections in the Act whereby the Superintendent is empowered to conduct hearings or, receive certain information or returns. Insofar as hearings are concerned, I would not think that section 3. is now necessary in view of the provisions of the Statutory Powers Procedure Amendment Act. That Act is much more full and complete. I can, however, appreciate the reason for there being such a section as section 3. I think if it is to remain in the Act it must be expanded considerably so as to make it more specific as to how it is to be applied and to make it tie in directly with those other sections of the Act which make the provisions of Section 3. necessary. I still think that in these instances the language adopting or incorporating provisions of the Statutory Powers Procedure Amendment Act would be more satisfactory.

5. The object of this section is apparent but I think the wording falls short of adequately expressing that object. The section refers to " the Superintendent or

any officer under him". I don't know what an officer "under him" would mean. Furthermore, I am not at all certain as to what ".....interested..... . in any insurance company....." actually means. I would assume that the reference to the term "any officer" suggests an individual who has some decision making authority. However, on the other hand it might also be aimed at individuals who because of their position in the Department have access to confidential information which should not be known to persons outside the Department who are engaged in the business of Insurance. I would think that this section should apply to all employees of the Department, and, the business should include the business of insurer, agent, broker, adjuster, salesman, whether in corporate form or otherwise. I therefore recommend that Section 5. be redrafted to read as follows:

> "5. Neither the Superintendent nor any person employed in the office of the Superintendent shall be interested as a shareholder, directly or indirectly in any company or corporation doing business in Ontario as an insurer, adjuster, agent or broker."

7. - (1) 1. This paragraph refers to "the principal office in Canada" and the "chief or general agent in Ontario". Neither of these terms are defined in the Act. In both instances you will note they are similar to phrases or terms which are defined and to which we have now made reference, namely,

"chief agency" "head office" and "chief office in Ontario". We therefore have further confusing terms. Who is the chief or general agent? Is he the same as "chief executive officer"? Between sections 7. 14. 15. 16. 27. 30. 32. and 97. we have reference to "chief office" "principal office in Ontario" "principal office in Canada" "chief agency" "chief office" "principal office" "head office" and "office of the chief officer or agent in Ontario". I would think it best that all these terms be gathered together and reduced to an absolute minimum number. I would think that this intention would be served by adopting the two terms I have referred to above, "principal office in Ontario" and "head office". Section 7.-(1) 1. should read as follows:

> "1. A register of all licences issued under this Act, in which shall appear the name of the insurer, the address of the head office, and where it is located outside of Ontario, the address of the principal office in Ontario and the name and address of person in charge thereof, the number of the licence issued, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent considers necessary"

8. I feel that this section should be the last section in Part I of the Act, the part referring specifically to "Superintendent and His Duties".

9. This section should be, in my opinion, the first section of Part II of the Act, the part relating to "General Provisions Applicable to Insurers". At the present time Part II begins with Section 20. In fact my comments with respect to Section 9.in this respect also apply to Sections 10. 11. 12. 15. 16. and 19. All of these sections, in my opinion, although relating to duties of the Superintendent, specifically relate to insurers. Therefore, it is my recommendation that all of these sections, namely, 9. 10. 11. 12. 15. 16 and 19. be included in the part of the Act dealing with insurers, Part II, subject to any changes that I hereinafter suggest.

To return to my specific discussion about the provisions of Section 9. I would ask that you read that section in conjunction with the provisions of section 23. (1). It is my recommendation that these two sections be combined into one.

Section 9. provides in part that it is the duty of the Superintendent to determine what right, if any, an insurer has to be licensed to carry on the business of insurance in Ontario. Section 23.(1) provides in part that the Minister has the sole discretion to issue a licence to an insurer to carry on the business of Insurance in Ontario. Although the effect of the two sections is to give the ultimate authority of issuing a licence to the Minister, neither section makes reference to the other. In fact

it is only with respect to licences to be obtained by insurers that there is a split between the Superintendent and Minister in this respect. I draw your attention to the fact that licences to be granted to intermediaries are issued by the Superintendent after the right to a licence has been determined by the Superintendent. I don't know what the reason for the difference is, but, if there is a reason for keeping the right to issue a licence in the Minister, the Act should reflect the part played by the Superintendent more clearly. I would, therefore, recommend that sections 9. and 23. be combined resulting in a section which would read as follows:

"(1) An applicant for a licence as an insurer under this Act shall apply to the Superintendent upon whom the duty of determining the right of any insurer in Ontario to be licensed under this Act devolves;

(2) Upon due application and upon the recommendation of the Superintendent the Minister may issue a licence to carry on the business of insurance in Ontario to any insurer coming within one of the following classes:

1. Joint stock insurance companies.

2. Mutual insurance corporations.

3. Cash-mutual insurance corporations.

4. Fraternal societies.

5. Mutual benefit societies.

6. Companies duly incorporated to undertake insurance contracts and not within classes 1 to 5.

7. Reciprocal or inter-insurance exchanges.

8. Underwriters or syndicates of underwriters operating on the plan known as Lloyds.

9. Pension fund associations.

(3) A licence issued under this Act authorizes the insurer named therein to exercise in Ontario all rights and powers reasonably incidental to the carrying on of the business of Insurance named therein that are not inconsistent with this Act or with its Act or instrument of incorporation or organization.

(4) Nothing in this section affects the right of the Lieutenant Governor in Council or the Minister to suspend or cancel any licence in accordance with the provisions of this Act."

You will note from my proposed wording certain additions or deletions from the wording now contained in Sections 9. and 23. For instance, I have eliminated the words now contained in lines 2 and 3 of Section 23.(1) "undertake contracts of insurance and" in order to be consistent with the changes I have recommended above with respect to other sections. You will further note from my proposed wording that I have maintained the duties of the Superintendent to determine the right of an insured to obtain a licence, and, made that duty tie in with the discretion of the Minister by providing that the Minister may only issue a licence upon the recommendation of the Superintendent. Insofar as the last three and one-half lines of Section 9. are concerned, you will note in my proposed section that they have been introduced, with changes, as a subsection (4). I made the changes because I do not think the

present wording in Section 9 is grammatically correct and furthermore I think that any suspension or cancellation must be subject to all provisions of the Act pertaining to suspension or cancellation and not just to the authority granted by the Act to permit suspension or cancellation.

10. This section, along with Section 11. deals with applications for an insurer's licence. Both sections need to be expanded in order to achieve clarity and at the same time provide for a procedure to be followed in arriving at decisions pertaining to licences of insurers.

As it is worded at present, Section 10. appears to be based on the presumption that some form of hearing has taken place leading up to a decision of the Superintendent. This hearing I presume refers to the application of the insurer to have the Superintendent determine the right of that insurer to be licenced as an insurer in Ontario. There is nothing in the section or in any other part of the Act to describe the procedure pertaining to such a hearing. Accordingly, there should be some provision in the Act specifically dealing with a hearing by the Superintendent of an application by an insurer applying for the right to be licensed as an insurer in Ontario. Section 9. now designates the Superintendent as the person to determine such right. Therefore, unless that section is further amended it would appear that only the Superintendent can be involved in the hearing. Section 10. in any event would have to be

expanded in my opinion in order to designate how the hearing comes about, the notice that is required, the time the notice is to be sent prior to the hearing, who can be present at such hearing, how such hearing can be proceeded with, all of the things that are now provided for in the Statutory Powers Procedure Act.

Section 10. is the only section in the Act whereby the Superintendent makes a decision relating to the licence of an insurer. Other sections provide for such a decision to be made by either the Minister or the Lieutenant Governor in Council or both, although in some instances such decision may be made on the advice or recommendation of the Superintendent. In my opinion, it would be most desirable if all decisions relating to the licence of insurers were made by the same individual or body in the first instance, that is either the Superintendent, the Minister or the Lieutenant Governor in Council. In this way the provisions of the Statutory Powers of Procedures Act could be more easily applied procedure surrounding the bringing about such decisions.

11. This section as it now stands does not seem to have any relevance to other provisions of the Insurance Act. This section talks about an applicant for a licence without specifying what kind of licence and refers to a person who considers himself aggrieved by a decision of the Superintendent without saying what decision. Does section 11. refer to a decision of the kind now envisaged by

Section 9. or does it refer to a decision provided for in other sections of the Act, such as Section 342. (8) and (9)? In any event the appeal referred to in Section 11. must now go to the Divisional Court in accordance with the provisions of The Judicial Review Procedures Act 1971. On top of the confusion that exists on the face of Section 11. (1) further confusion is created when you compare the provisions of that section with the provisions of section 359. This latter section in effect provides that if the Superintendent refuses to grant or suspends or revokes a licence applied for or issued to a broker or adjuster "any person who considers himself aggrieved by the decision of the Superintendent" may appeal to the Minister. Section 11. is not qualified as to the type of applicant, and presumably therefore applies to both insurers and intermediaries. On that face then Section 11. appears to provide that the appeal referred to therein goes to the Court of Appeal (now the Divisional Court) while Section 359. on its face provides that the appeal goes to the Minister. Adding to this confusion is the use of the phrase "any person who considers himself aggrieved by the decision" contained in both Section 11. and 359. Who is that person? Surely the person with the right of appeal should only be the person affected directly by the decision of the Superintendent.

Section 11. (2) does not in my opinion apply in any event to the present practice pertaining to appeals

to be heard by the Divisional Court. I don't think any attempt should be made for when the appeal should be heard or set down because the practice of the Divisional Court may make such a provision impossible to be applied. My comments in this respect also apply to Section 11. (3).

Insofar as Section 11. (4) is concerned, there definitely has to be a record of some kind and provision will have to be made in a new section for such a record to make certain that something goes before the Divisional Court upon which the Divisional Court can act. The practice of the Divisional Court requires that this be done.

It is to be noted at this point that Section 11. presumably is dealing with or is intended to deal with matters involving a licence or licences of insurers. There are other sections of the Act which also deal with the licences of insurers and which provide for appeals to be taken from decisions with respect to the licences of insurers. I recommend that consideration be given to the standardization of the procedures relating to decisions concerning the licences of insurers and any appeal to be taken from such decisions. The other sections to which I make reference are 34. (1), 35. 36(2), 42. 94(2) and 140(3). All of these sections relate to suspension or cancellation of an insurer's licence.

There is nothing in any of these sections to specify whether prior to suspension or cancellation being brought into effect, any hearing is to take place in order to provide the licenced insurer an opportunity to deal with

any allegations which form the basis of the decision to consider suspension or cancellation of the licence. Also insofar as these sections are concerned there is not any uniformity as to whether it is the Minister who makes the ultimate decision or whether it is the Lieutenant Governor in Council. Uniformity should be brought into these sections and provision should be made for more detail concerning what steps are to be taken leading up to suspension or cancellation.

It is my recommendation that the initial decision to refuse or grant an application for an insurer's licence, or the issuance of, renewal, suspension, cancellation variation or revocation thereof be made by one individual or body. I further recommend that the decision in every instance be made by the Superintendent. In this way the provisions of the Statutory Powers Procedures Act could be more easily applied to such decision making. Then any right of appeal from such decision could where ever deemed necessary be to a designated individual or body, that is the Minister or Lieutenant Governor in Council, or preferably, be left to be made pursuant to the provisions of the Judicial Review Procedures Act 1971.

In accordance with these recommendations, therefore, I suggest that Sections 10. and 11. be removed from the Act and be replaced with sections which would read as follows:

> "The Superintendent shall decide in the first instance all questions and matters relating to the application or issuance, renewal, variation, suspension, cancellation

> revocation of a licence of an insurer to carry on the business of insurance in Ontario.
>
> The Superintendent shall prior to making any decision, the effect of which would be to refuse to issue or renew, or to suspend, cancel, varry or revoke the insurer's licence, shall conduct a hearing in accordance with the provisions of The Statutory Powers Procedure Act.
>
> The insurer aggrieved by a decision made by the Superintendent following a hearing as provided for in Section ___ may appeal therefrom to (here provide whether such appeal is to be made to the Minister, Lieutenant Governor in Council or whether all appeals to be to the Divisional Court pursuant to the provisions of the Judicial Review Procedures Act)"

In order to be consistent you should refer back to my recommendations with respect to Section 9. and consider elimination therefrom of the divided function of the Superintendent determining the right of an insurer to a licence and the Minister having the discretion to issue such licence. If, as I have suggest, all matters relating to licences be dealt with by the Superintendent in the first instance, it will no longer be necessary to provide in Section 9. for the continued involvement of the Minister in the issuance of a licence.

12. This section creates an offence. I intend later in this report to deal in what I will then call "Offence Section". It will be part of my comments in that respect to recommend that consideration be given, creating an"Offence Section". I will reserve my comments about Section 12. until that point in the report.

13. This section creates an offence. My comments concerning Section 12. apply to this section.

14. This section purports to give the Superintendent authority to obtain certain information from persons licenced under the Act and from insureds. I question the right of the Superintendent to have such power in relation to insureds. In any event, even if he properly has such power, I believe the section does not contain adequate provision for the application of such power against an insured. For instance, what happens if the insured refuses to give the information to the Superintendent? If it is intended that the insured, refusing to give this information, is guilty of an offence to the Act, should there not be something more placed in the section which more specifically deals with the obligation of the insured.

In any event, cannot the provisions of Section 14. be extended to include employees of licenced insurers or other persons or corporations licenced under the Act. For instance, a salaried employee of a licenced insurer is excluded from being licenced as an adjuster. The Superintendent may well find need to compel that person to devulge certain information.

Section 14. as it is presently worded restricts the information that must be given to information relating to "any contract of insurance" or "any settlement or adjustment under any such contract". Should that section

not be expanded so as to also include any settlement or adjustment of a claim brought on behalf of or against the insured person.

15. Changes should be made in this section to reflect my recommendation concerning the standardization of terms referring to the principal office of an insurer. See my comments relating to Section 7.

16. Comments of Section 15. apply to this section.

20. - (1) I recommend that the words "to insurance undertaken in Ontario and" be eliminated from this subsection so as to make it read;

"20 - (1) This Part applies to all insurers carrying on business in Ontario."

It is my opinion that the words which I have suggested be eliminated from this subsection are superfluous.

20. - (2) I recommend that the words "undertaking insurance" now contained in the second last line of that subsection be replaced by the words "carrying on the business of insurance". This change reflects my recommendation with respect to the definition of "insurer".

20. - (3) I recommend that the words "undertaking insurance in Ontario or", now contained in the first line of this subsection be removed. The reason for my recommendation in this respect is that this subsection simply defines

what constitutes "carrying on the business of insurance in Ontario" and the words I have recommended to be removed, add nothing to that definition.

21. - (1) I recommend that the words "undertaking insurance in Ontario or", contained in the first line of this subsection be removed. I recommend this change in order to be consistent with my recommendation concerning the definition of "insurer". This subsection would then read as follows:

> "21. - (1) Every insurer carrying on business in Ontario shall obtain from the Minister and hold a licence under this Act."

I comment here the fact that this subsection refers to the licence being obtained from the Minister. My previous comments concerning Section 9. did not suggest the licence not come from the Minister but rather that the Minister not retain a discretion to override the Superintendent on the latter's recommendation that a licence be issued.

21. - (2) This subsection creates an offence. My comments concerning Section 12. apply here.

21. - (3) This subsection creates an offence. My comments concerning Section 12. apply here.

21. - (5) This subsection creates an offence. My comments concerning Section 12. apply here.

23. - (1) My comments concerning Section 9. include my comments about this subsection.

24. - (4) This subsection provides for basically the same thing as is provided for in Section 33.-(3). I recommend that only one of those subsections remain in the Act and that the other be eliminated.

25. - (1) This subsection, relates specifically to automobile insurance. It should therefore be included in that part of the Act which deals specifically with automobile insurance, Part VI.

25. - (2) This subsection has to be removed to Part VI, along with Section 25.-(1). I must comment however on the fact that this subsection relates to a cancellation of a licence of an insurer who is in violation of the provisions of Section 25.-(1). The subsection is absolutely silent as to what procedure is to be followed in leading up to the cancellation of the licence and, moreover, the subsection makes no reference whatsoever to the person or body responsible for bringing about the cancellation of the licence. I recommend that this subsection be amended so as to correspond to my recommendation concerning Sections 10. and 11.

32. - (1) In light of the provisions of Section 9. and Section 23.-(1), I must wonder why this subsection was enacted. Was it intended that the provisions of this subsection override the provisions of Section 9. and Section 23.-(1)? In addition, the reference to the "Corporations Act", now contained in this subsection, appears to apply to only those companies incorporated under the laws of the Province of Ontario. I do not think, then, that it would relate to companies incorporated under the jurisdiction of the Dominion of Canada. I do not see that any purpose is served by maintaining this subsection in the Act. I therefore recommend that it be removed.

32. a The several subsections of this section should be amended so as to eliminate therefrom the term "chief agency" wherever it may appear and replace that term with "principal office in Ontario" and to eliminate the term therefrom "chief agent" wherever it may appear, and replace it with the term "principal officer in Ontario". These amendments are in keeping with my previous recommendations.

33. - (4) This subsection refers to the Minister having "afforded the insurer a reasonable opportunity to be heard --". My comments concerning Sections 10. and 11. apply here. There just must be something more than a bald reference to a "opportunity to be heard". Perhaps the subsection

could refer to a "hearing" pursuant to the provisions of Section 10".

34. - (1) I recommend that this subsection be amended so as to replace the word "Minister" in the last line of this subsection with the word "Superintendent". I recommend this amendment in order to be consistent with my recommendations concerning Sections 10. and 11.

35. My comments concernings Sections 10. and 11. apply here insofaras replacing the word "Minister" with the word "Superintendent" and providing for a procedure relating to the suspension or cancellation of the licence of the insurer.

36. - (2) I recommend that this subsection be amended so as to bring about consistency with my previous recommendations. This would mean insofar as this subsection is concerned, eliminating the steps whereby the Superintendent reports to the Minister and the Minister in turn reports to the Lieutenant Governor in Council who, may suspend or cancel a licence. This subsection calls for a three step procedure which has not been called for in any other part of the Act. I recommend that this three step procedure be eliminated and amendments be made to the subsection in order to bring about consistency with recommendations made concerning other sections of the Act. These amendments would provide

for a procedure that would involve a decision of the Superintendent only, subject to a right of appeal to whatever form was chosen, based on information gathered by the Superintendent under his powers to do so set forth in other sections of the Act.

36. - (3) I recommend that this subsection be amended so as to replace the word "Minister" with the word "Superintendent".

36. - (4) I recommend that this subsection be amended so as to be consistent with recommendations relating to Section 36.-(2).

36. - (5) I recommend that this subsection be amended by adding the words "to carry on the business of insurance" after the word "licence" as it appears in the first line. Without the addition of these words, the subsection is not clear as to what licence is referred to.

37.
38.
39.
40. I recommend that these sections be amended so as to bring about a consistency with that which I have recommended previously relating to Sections 10., 11. and 36.

To reiterate, my intention is to have the Act reflect a consistent approach to the procedure adopted for bringing about a suspension or cancellation of an insurers licence. As the Act is presently framed, several methods are employed in this respect involving several different bodies or persons. I find no necessity for such a multiplicity of parties and proceedings.

41. It is my recommendation that this section be amended in order to make it provide for certainty in its application. As this section is now worded, it would seem as though a licence of an insurer, suspended or cancelled for any reason, could simply be revived "if the insurer makes good the deposit, or the deficiency, as the case may be--". I am sure that it is the intention of that section to apply only to a suspension or cancellation following a breach of those provisions of the Act which relate to deposits. The Act then should say so specifically. In addition, I recommend that the section be amended so as to replace the word "Minister" with the word "Superintendent".

42. If my recommendations relating to the powers of decision making on the part of the Superintendent are adopted, then the need for Section 42. no longer exists. We would then, in effect, have the Superintendent reporting to the Superintendent. To be consistent with my recommendations, I would think that the Superintendent alone should have the power or duty to do that which is now required by Section 42. In my recommendations, the Superintendent need not report contravention of the Act in order to bring about a suspension or cancellation, but, be empowered to bring about suspension or cancellation on his own, provided he follows the procedure I have recommended in Sections 10. and 11.

79. - (4) In my opinion, this subsection provides exactly the same thing as is provided for in Section 15. I therefore recommend that it be removed from the Act.

87. I wonder why the Act would specifically provide that fire insurance can be effected with an unlicenced insurer.

88. - (1) This section refers to the term "any underwriter's agency". This term is not defined in the Act and I cannot see that it is used in any other section of the Act. What does the term mean?

89. My comments concerning Section 12. apply here.

90. This section requires clarification. On one hand, it seems to suggest that information etc. disclosed to the Superintendent is absolutely privileged while, on the other hand, it seems to restrict that privilege only to proceedings brought by or on behalf of the person who would claim the privilege. In other words, once an individual has filed a document or given information to the Superintendent, he himself cannot use that information or document in his favour, but presumably it can be used against him. I am not at all certain that this was the original intention of this section.

91. - (2) As far as this subsection is concerned, my comments relating to Sections 10., 11., and 36. apply here.

91. - (3) This subsection is an offence and my comments concerning Section 12. apply here.

92. I recommend that this section be placed in Part III of the Act. This section does not specifically refer to insurers but rather contracts of insurance. For this reason, in my opinion, this section is more appropriately placed in that part of the Act dealing with "Insurance Contracts in Ontario", Part III.

94. This section, being a penalty section, is related to and belongs with those sections of the Act in which an offence is created. For this reason, it is my recommendation that Section 94. be grouped with those sections that deal specifically with offences and it is my recommendation that those sections will appear in Part XVIII of the Act.

97. This section refers to the term "chief officer or agent in Ontario". I have previously commented on this phrase and made my recommendations to its being replaced in discussing Section 7.

98. I wonder why this section is deemed not to apply to contracts of fire or automobile insurance. Perhaps it is because the question of materiality is dealt with specifically in other parts of the Act which relate specifically to fire and automobile insurance. Although, it would appear that to some extent materiality is dealt with in other parts of the Act to which this section does apply.

101. - (1) This subsection is a very important subsection inasmuch as it deals with the matter of disclosure of significant information to an insured. I think the present practice is such that the spirit of that section is not complied with. I find that most, if not all insurance contracts, if they do contain the information that they are required to contain by virtue of the provisions of this subsection, do not do so in a method that would permit the average person to find or understand the information. It is my recommendation that at the very least the word "clearly" be added to that subsection following the word "shall" in line one. The subsection would then begin "Every policy shall clearly contain--".

106 - (1) A person experienced in dealing with claims under insurance policies, may know what the intention of this section is, and more specifically may know what the word "equities" is intended to mean. Unfortunately the term "equities"

is not defined in the Act and I am not sure that it has any meaning in law. I do not suggest that you attempt to define the word "equities", because in so doing, you could not attempt to be exclusive for fear of leaving something out. What really is intended by the use of the word "equities" is to put the judgment creditor in the same position as the insured, no higher or no lower, in dealing with the insurer in a claim under its policy. I wonder if the word "equities" is adequate in this respect. For instance, consider the provisions of Section 92. in relation to the word "equities" as used in this subsection. Do the "equities" prevent a person, not the insured, who has not with the consent of the insured intended to bring about a loss or damage, from claiming under a policy of insurance?

107. - (1) I wonder why this section is included in the Insurance Act. I would think it involves matters more properly dealt with by application of the rules of practice and procedure made pursuant to the provisions of the Judicature Act.

108. - (3) As far as this subsection is concerned, I recommend that amendments be effected so as to provide that contracts of insurance should not terminate until a specified number of days subsequent to the mailing of the notice provided for in subsection have elapsed.

In this day and age, it is not uncommon for a bank or other financial institution to wrongfully deal with cheques or other bills of exchange. I would not think that it is advisable to maintain a subsection that would enable an individual's insurance coverage to be taken away because of no fault of his, and without his having been given some reasonable opportunity to correct the fault.

113. - (2) As far as this subsection is concerned, I question whether the provisions of the Vendors and Purchasers Act apply to the type of question referred to in that section. I think that what is required here is an amendment to the section so as to allow for its own procedure rather than attempting to incorporate the procedure provided for in the Vendors and Purchasers Act.

114. This section provides "Any licensed insurer that discriminates unfairly between risks in Ontario because of the race or religion of the insured is guilty of an offence". To begin with I do not know how anyone can discriminate unfairly. So to provide, suggests that one can discriminate fairly in matters of race or religion. All that is required in this section is the reference to the word "discriminates" removing the word "unfairly". In addition, I would point out that

my comments concerning Section 12. apply here as well.

117. - (1) (a) There appears to be an inconsistency between the provisions of this subsection as it relates to "automobile" and the provision of Section 27. Do not the provisions of Section 27.-(2) adequately deal with the matter of insuring an automobile against the peril of fire. It is my recommendation therefore that the word "automobile" be removed from Section 117.-(1)(a). In this manner there will be consistency between that subsection and Section 27.-(2). I would also recommend the complete removal of Section 117.-(2), inasmuch as its present effect is to override the exception contained in Section 117.-(1)(a), relating to automobiles. Therefore in effect, it does no more than repeat the provisions of Section 27.(2).

118. - (4) I wonder what the words "more extended insurance against the perils mentioned therein" are intended to mean. Is it intended to have a different meaning from the words "extended insurance" contained in the last line of this subsection? Furthermore, is it really intended to refer to extended coverage or extend the peril insured? As it now stands, I do not know what it means.

119. In my opinion, significant questions exist which are not answered by this section. When is the renewal receipt delivered, and to whom is the renewal receipt delivered? It is my recommendation that this section be expanded to answer these questions.

120. In order to be effective, this section requires clarification. To begin with, it provides in the last two lines as follows, "within two weeks from the receipt of the notification--" when is the notification received, or deemed to be received so that one may know when the two week period commences. Furthermore, if a valid binder is issued at the time the application is submitted, what coverage is afforded to the insured in the event the insurer reduces coverage either during the time remaining on the binder or, more significantly, during the two week period which must elapse before the policy can be rejected. It is my recommendation that the section be amended to specifically provide that the insurer must personally serve the insured or applicant with the particulars wherein the policy differs from the application. If a broker is involved, then the insurer would be given the option of serving the broker who in turn would be required to notify his client of the changes. In this manner the broker, in the first instance, would have to make certain that he had not purported to bind too broadly.

154. - (1) The effect of this subsection is to permit the insurer to provide in the policy when the policy should take effect. I wonder what is to be gained by allowing the insurer to do this. It is my recommendation that no right be given to insurers to so provide. Accordingly, my further recommendation is that the words "subject to any provision to the contrary in the application or the policy" be removed from Section 154.-(1).

159. What is the justification for this section? Why should an insurer have any limitation period running in its favour when it has failed to disclose or it has misrepresented facts material to the insurance. This section as it is now framed, does not promote the obligation of full disclosure on the part of the insurer. I think such an obligation would be promoted properly if the contract were to remain voidable at the instance of the insured by reason of the failure to disclose or the misrepresentation of the insurer.

160. - (3) It is my recommendation that this subsection be amended so as to provide for some notice to be given to the insured. As the subsection now stands, a contract can be voided by the insurer without any notice being given to the insured, even though the error or inadvertence is on the part of the insurer.

198. I have been unable to determine the need of this section. It would appear to me to afford to an insurer something which the insurer is not entitled to have or should not have, namely, an immunity to the consequences of his own wrongful acts. I recommend that this section be removed from the Act unless there is some valid reason for it remaining.

At this point in my report, I would like to deal with Part XIV of the Act. This part of the Act relates specifically to agents, brokers, salesmen and adjusters. Accordingly, it is the part of the Act which ostensibly should have the most direct bearing on my study. It is my intention to deal with the sections of Part XIV, making comments about their present form and content from the point of view of both their linguistic uncertainty and their application in law and practice. I will not be dealing with these sections as deeply as I might otherwise do at this time, because to do so in my opinion requires the adoption of a basic change in philosophy, attitude or approach to most of the subjects now covered by this part of the Act as it is presently framed. It is my intention to discuss and make recommendations regarding basic changes in philosophy, attitude or approach in a further report which is now in the final stage of preparation and which should be available to you in the immediate future.

342. - (1) This subsection provides in part that the "Superintendent may issue to any person who has complied with this Act a licence....." Nowhere in the Act is there any indication as to what that person has to do in order to comply with the Act. With the use of the word "may" there is no suggestion that there is any absolute right to obtain the licence. The licence referred to in this sub-section is an agent's licence.

342. - (3) This sub-section on its face is inconsistent with the provisions of sub-section (1). This section provides in effect that "the Superintendent shall, if he is satisfied that the applicant is a suitable person", give that person a licence provided that he has been appointed by a licenced insurer, notified the Superintendent of such appointment and the person to whom the licence is to be granted has applied for the licence and has paid a fee. There is no explanation contained in this sub-section or anywhere in the Act as to why sub-section (1) is discretionary and (3) is mandatory with respect to the issuance of the licence to an agent. This sub-section also uses the term "suitable" when talking about requirements of the applicant. What does this term mean? When you consider the provisions of Section 342. (4) "suitable" would appear to mean simply the information that is supplied pursuant to that sub-section by a sponsoring company. In other words the sponsoring

company dictates in so many words who shall be deemed "a suitable person" by the Superintendent.

I recommend that Section 342. (3) and (4) should be revamped considerably so as to most clearly define the criteria involved in determining the right of an agent to a licence. These sections should confirm that the discretion is with the Superintendent. The object in setting out the criteria would be to permit a person applying for a licence to know on what basis the Superintendent is to exercise his discretion. It is to be remembered that in the event an applicant is turned down, the Superintendent will have to eventually conduct a hearing and grant his reasons for turning the application down. That decision may be reviewed by a higher authority.

342. - (4) This sub-section is the basis of the "sponsoring" aspect of the appointment of agent in Ontario. The theory behind sponsorship was probably a good one when it was originally conceived. I understand that theory to be that the sponsoring company would become responsible for choosing a good individual and training him as an agent to deal with the public. In my opinion, whatever the original purpose was, Section 342. (4) does not serve any desirable purpose today. Today a sponsoring company stands behind the agent only to the extent of filling out a form pursuant to the requirements of this sub-section. If the original intention

was that the company, that is the insurer, was to vouch for the individual as an agent, then as I have indicated above that would no longer appear to exist. About the only purpose I can see for there being sponsorship today is to support the principle of single company representation, which may have some purpose perhaps, and also permit both the insurer and the Office of the Superintendent to quickly and without any fuss get rid of an undesired agent. This latter statement of course refers to the provisions of Section 342. (6).

342. - (6) I am not aware that this sub-section has ever been the subject of consideration by any Court in Canada. Apart from the fact that I believe that a Court would have a difficult time upholding that section because of its inherent lack of fairness I can't believe that there is any part in our society today for such a section. To think that a man's livelihood is dependant upon the whim of some insurance company, with nothing more, is hard to accept. The fact that the licence is "ipso facto suspended" by the company, simply advising the Superintendent that the sponsorship is withdrawn, flies in the face of all of the law that requires an individual's right to work or earn a living be dealt with according to the Rules of Natural Justice. I would think that an individual's right to be a licenced agent in the Province of Ontario should be dependant upon his ability to serve the public in that capacity and not on some piece of paper to be granted or withdrawn by an insurance company.

342. - (8)
- (9)
- (10)

It is my recommendation that these sub-sections receive complete revision along lines consistent with my more complete recommendations dealing with similar provisions of the Act relating to insurer's licences.

Because of the way they are presently worded, the provisions of these sub-sections apply only to agents, salesmen and adjusters. For some reason or other the provisions of these sub-sections do not apply to brokers. Brokers are dealt with by the provisions of Section 344. -(5). The application of these sub-sections to adjusters is through the provisions of Section 350. -(6). For some reason or other, notwithstanding this provision, Section 350 -(5) also contains some procedure affecting the suspension or revocation of an adjuster's licence.

We accordingly have at the present time three separate sections in the Act dealing with cancellation, suspension or revocation of licences granted to agents, brokers, salesmen and adjusters. The three sections basically provide for the same thing, although three sections do not in every instance refer one to the other. As if this is not confusing enough, on top of these three sections there are, if you wish, below these three sections the provisions of Regulation 539 paragraph 14. This Regulation provides a separate code of procedure leading up to the suspension or revocation of a licence granted to an agent. I presume it relates only to an agent inasmuch as the section of the Regulation itself does not refer to the type of licence with which it is dealing.

The heading of the Regulation itself refers to licences of "insurance agents". I do not understand why Regulation 539 -(14) was enacted at all, let alone without any reference to the provisions of Section 342. -(8) (9) and (10). In view of this needless repetition I recommend that one code of procedure be adopted relating to the matter of applications for or renewals, variations, suspensions, cancellations, or revocations of licences issued to agents, brokers, salesmen and adjusters. As I have indicated, it is my intention to deal in greater depth with this type or form of procedure in my further report, which is now under way.

342. - (11) This section provides for an almost automatic renewal of agent's licences. There is virtually no useful information that is required to be given upon the application for renewal. I firmly believe that applications for renewal are too frequently treated lightly. At the time application for renewal provides a logical point at which to re-assess the holder of the licence to continue to hold such licence. I recommend that Section 342. -(11) be revised so as to require the giving of more meaningful information and that its provision apply to the application for renewal of licences for all intermediaries.

342. -(12) I find the provisions of this sub-section most confusing. I gather it is intended to prevent licenced agents from acting as brokers in dealing with unlicenced insurers.

I am sure there must be some purpose for this provision if that is what it is intended to provide, but I am not at all sure of that purpose.

342. - (13) This sub-section provides for single company representation. It is a significant provision and I will deal with it in length in my further report.

342. - (14) I wonder if this sub-section now has any application to any actual practice existing in the insurance industry. Although there is no definition of "collector of insurance premiums" I assume that it relates to individuals who were at one time employed or retained by some insurance companies to collect "debit premiums". I now understand that those companies employ only licenced agents for this purpose and there really are no longer collectors of insurance premiums as allowed for in that section. If there is some reason for their remaining to be recognized by the Act I would think that the Act should make further provision specifically dealing with their position in collecting premiums. For instance, there is a provision in the Act which deems an agent the agent of the insurer for the purpose of his receiving premiums. Would this provision also apply to "collectors of insurance premiums"?

342. - (15)
(16)
(17)
(18) These sub-sections deal with individuals who are excluded

from the need to obtain licences under the Act. I believe that my comments concerning these sections are better made in my forthcoming report. I will accordingly deal with these sub-sections in that report.

342. - (22) This sub-section must be regarded along with the provisions of 343. -(10), 344. -(6), 350. -(7), and 354. All of these sections deal with a person purporting to conduct himself in a business or in a capacity which is required to be licenced under the Insurance Act, excluding insurers. It is my suggestion that there need be only one section to deal with this situation and that that section could very well be a re-wording of the existing section 354. and would read something as follows:

> " a person not being licenced under this Act shall not hold himself out as being engaged in or carry on any aspect of the business of insurance in Ontario for which a licence is required under this Act."

If this re-wording is adopted, then of course it will not be necessary to maintain in the Act, Section 342. -(22), 343. -(10), 344.-(6), 350. -(7).

343. - (1)
(2)
(3) The comments which I had to make about Section 342. -(1) (2) and (3) apply here. There is nothing in these sub-sections which would indicate to a person what he has to do in order to comply with the Act. Again the discretion

indicated in sub-section (1) by the use of the word "may" appears to be over-riden by the use of the word "shall" contained in sub-section (3).

343. - (6) My comments concerning Section 342. -(6) apply here.

343. - (8) My comments concerning Section 342. -(11) apply here.

344. - (1) This sub-section adopts as a criterion the meaningless term "suitable person". My comments concerning Section 342. (3) in this respect apply here.

344. (6) I have commented on this sub-section previously and, recommend that its provisions be introduced through another section which I have drafted above as part of my report dealing with Section 344. -(22).

344. (7) This section does not make much sense to me. In fact I cannot determine the purpose it is intended to serve.

346. - (1)
(2)
(3) My comments concerning these sub-sections are the same as my comments relating to section 342. -(1) (2) and (3) and Section 344. -(1) (2) and (3)

347. - (2) I question the reason for excluding life agents from the provisions of section 347. -(1). Why should life insurance

agents be placed in a different position?

350. (1)
(2)
(3) My comments concerning Section 342 -(10) (2) and (3) apply to these sub-sections. Once again we have the reference to "suitable person".

351.
352.
353. Insofar as these sections are concerned, I intend to deal with their provisions in my next report. It is my opinion that these three sections involve a change in policy or approach which I will recommend for your consideration.

354. I have dealt with this section above.

355. I know this section was recently amended but I feel that its provisions remain basically the same as the provisions of Section 347. Do they not both purport to do the same thing? Is there any reason for keeping both sections in the Act? I recommend that Section 355. remain in the Act and Section 347 (1) and (2) be removed.

356. - (2) I wish to comment on the provisions of this sub-section in my next report. There is no question in my mind but that significant consideration must be given to the matter of fees and commissions payable to intermediaries. This is an area which in my opinion is the source of many problems in the

insurance industry. As the Act is presently framed, and I am thinking primarily of this sub-section as well as Section 388 (b) (viii) a rigid approach concerning the matter of fees and commissions is forced upon the industry. I do not believe that the industry wants, nor do I think that the industry should have this situation. The result appears to me to be a resort to subterfuge or nefarious schemes in order to avoid the provisions of the Act. I want, therefore, to deal with this subject at some greater length in my next report.

357. -(1) This sub-section deals with "twisting" about which so much has been said in the immediate past. Speaking for myself, I think the worst thing about "twisting" is the use of the term itself. I do not know why the Act supports the use of that term by adopting it in the marginal notes referable to this sub-section. In my first report I suggested that the "twisting" section was aimed perhaps more to protect insurers than it was to protect insureds. I still have the same view. Since my study was undertaken a Regulation has now been passed, effective the 1st of November, 1974 to provide for further requirements in the event of the replacement of one policy of life insurance by another. The Regulations will require much more disclosure of information before any form of replacement can be made. I think this is a good thing. I have always felt that disclosure is undoubtedly the real answer to many of the

problems concerning the insurance industry, and certainly about the matter of "twisting".

I recommend that Section 357 -(1) could be amended so as to better serve the problems it should serve, namely, the interest of insureds. I recommend the insertion of the words "to his prejudice" after the word "insured" in the second line of the sub-section. The sub-section then would begin "any person who induces or attempts to induce directly or indirectly, an insured to his prejudice....." In this manner the onus is placed upon those who allege something has happened that should not happen to demonstrate that what has happened is to the prejudice of the insured. After all it is the interest of the insured with which we are concerned.

357. -(2) (a) This sub-section would appear to me to be superfluous to the provisions of Section 388. -(b) (v). I would recommend the provisions of Section 388. remain as it is the general section dealing with "unfair or deceptive acts or practices in the business of insurance".

357. -(2) (b) This sub-section and paragraph is superfluous to the provisions of Section 388. (b) (vi). I think the latter section should remain for the reasons I have suggested in my comments concerning Section 357. -(2) (a)

Both of these sub-sections use the phrase "incomplete comparison". Neither of the sections go on to indicate as to how the "incomplete comparison" must be used in order

for it to be offensive. I refer you to the provisions of Section 388 (b) (vi) which in my opinion more adequately deals with the situation. This is another reason why this sub-section should be moved into, or incorporated with the provisions of section 388.

357. -(2) (c) Again I think the provisions of this sub-section should be transferred to or incorporated with the provisions of section 388.

358. It is my recommendation that this section would be better placed in that part of the Act that deals generally with the position of insurers under the Act. This would be Part II. I will be making comments in my next report concerning the position of partnerships and corporations holding licences under The Insurance Act.

359. I don't know why this section is place in the Act where it is, and in fact I don't know why this section is contained in the Act at all. If it is to be in the Act I would think it would be better if its provisions were contained in Section 344. respecting brokers, and 350. respecting adjusters. It is just another section which provides for the matter of revocation or suspension of a licence. Why it only applies to brokers or adjusters I don't understand. The right of appeal which it provides, from the Superintendent to the

Minister, is a form of appeal not referred to in any other Section of the Act relating to agents or salesmen. It is my recommendation that in view of my comments concerning Section 342, 343, 344 and 350 that Section 359 is no longer required to be in the Act.

360. I wonder why this section applies to agents or adjusters only.

I would like to deal now with Part XVIII of the Act. This part relates to "Unfair and Deceptive Acts and Practices in the Business of Insurance". You will recall that on occasion in this report I have mentioned that it was my intention to include within Part XVIII a list of offences under the Insurance Act. This list would be drawn from the various sections of the Act which now designate certain conduct or the lack of certain conduct as an offence under The Insurance Act. The only alternative to this approach, in my opinion, would be to take each section that now creates an offence, and with appropriate amendments therein, provide more specifically negative or positive duties to act in a certain manner. I will give you an example of my two suggested alternatives, and how they would apply in practice.

Section 89. of the Act as it is presently worded provides as follows:

> "89. Any person, other than an insurer or its duly authorized agent, who advertises or holds himself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself or any other person, is guilty of an offence."

My first suggested alternative would require that Section 89 be moved from its present position in the Act and placed in Part XVIII and worded in its present fashion but as part of a list of specific offences under the Act. My second suggested alternative would require a simple rewording of Section 89. so as to make it provide for a specific prohibition to traffick in life insurance policies, and on that basis, Section 89. would read as follows:

> "89. No person, other than an insurer or its duly authorized agent, shall advertise or hold himself out as a purchaser of life insurance policies or of benefits thereunder, or traffick or trade in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself or any other person."

I have previously refferred to Section 94. of the Act. This section is the present penalty section of the Act. I repeat my previous suggestion that it be brought forward into Part XVIII.

You will note that Section 94. makes it an offence to do anything which the Act prohibits and not to do that which the Act prescribes. If, rather than gather all of the sections creating an offence together in one place, you adopt my second suggested alternative, Section 94 could be brought into Part XVIII simply providing as it does now, that any contravention of the offence sections specifically outlined throughout the Act would be deemed an offence under the Act. At the present time Section 94 (1) (b) and (c) provide to this end. Section 94 as it is presently worded unfortunately attempts to combine the general with the specific and to that extent it is confusing. For this reason it may be necessary to divide the section into at least two parts.

It may be of assistance to you at this point to have a list of all of the sections of the Act which create a specific offence, and they are as follows:

> "Sections 12. 13. 21.-(2)(3)(5), 36-(3), 78.-(5), 80., 81., 89., 91.-(3), 94.-(1)(3), 111.-(3), 114., 297.-(2), 342.-(7)(22), 343.-(7)(10), 344.-(6), 346.-(12), 348., 350.-(7), 352.-(4), 354., 356.-(1)(2), 357.-(1)(2), 362.-(4), 363., 366.-(6), 367.-(4) and 368.

It is my recommendation that my second suggested alternative be adopted. That is a specific provision for acting or not acting in a specified manner is to be introduced into each section which presently creates an offence under the Act. Part XVIII of the Act will be amended so as to provide for the same provisions that are now contained in Section 94, any contravention of the Act constitutes an offence under the Act.

I would like now-to deal with certain of the Sections of Part XVIII of the Act as they presently exist.

388. (b) (i) It will not be necessary to maintain this paragraph in the Act should my recommendations in relation to Section 94 and Part XVIII be adopted.

388. (b) (viii) This sub-paragraph was enacted, I understand, so as to prevent a person engaged in transacting automobile insurance from charging something more than that which he would be able to charge on the basis of applying an agreed percentage of the stipulated premium. As indicated above, this sub-paragraph along with Section 356. (2) is the basis for a great deal of confusion and difficulty in the industry, and matters about which I will be dealing at some length in my next report. At this point I would simply like to state that even though I understand what Section 388.(b)(viii) is intended to mean, I don't easily gather such intention from reading the words that now exist. In fact I really don't know what those words mean when read carefully. For instance they include "premium allowance". There is no definition of "premium allowance" contained in the Act and I have not been able to find anyone in the insurance industry who knows what that term means. Furthermore, the sub-paragraph refers to a fee "other than stipulated in a contract of insurance upon which a sales commission is payable....." To begin with I don't know what fee is stipulated in a contract of insurance and I don't think there is one, and furthermore, and more significantly, I

don't know how any sales commission is payable upon a contract of insurance. The net effect of the words in my opinion would create an uncertainty which would make the total provision incapable of being enforced in its present form. If a sales commission is not payable on the basis of a contract of insurance, then, the sub-paragraph suggests, a fee may be charged, even though no fee is stipulated in the contract of insurance. At least, that is how I read the section. In the final analysis, isn't the major concern that the insured or applicant, as the case may be, should know in advance what is being paid by him by way of commission or fee or otherwise. I will deal in my next report about the matter of commission and fees in relation to disclosure and consent or agreement on the part of the insured or applicant.

389. This section is a classic example of my second alternative to a new method of designating offences under the Act. Section 389. would remain in its present form and then it is my suggestion that Section 388. contain provisions similar to those now contained in Section 94.in order to provide for the method and penalties of such breach.

390. This is a general provision giving to the Superintendent the power to examine and investigate etc. persons who he feels are engaged in unfair or deceptive acts or practices. It is my opinion that this section is not only too general but it does not go far enough in specifically indicating

just what in fact the Superintendent can do and how he can go about doing it. Section 3. of the Act is a section similar in its intent. I discussed the provisions of Section 3. at the beginning of this report and there suggested that Section 3. as it presently exists would be better placed in another position in the Act so as to enable the Superintendent to deal with certain duties or requirements as they are specifically outlined. I thought Section 3. as it presently exists appeared to be "floating"in the Act and not tied to any specific section or sections in the Act as it should be. Section 390. although specifically tied to a section, suffers as I have indicated above from lack of particularity as to how the Superintendent may go about investigating a person whom he thinks is engaged in an unfair or deceptive practice. I recommend that Section 390 be expanded so as to read as follows:

> "390. (1) The Superintendent or such person or persons as he may from time to time designate may, upon reasonable and probable grounds examine and investigate the affairs of every person engaged in the business of insurance in Ontario in order to determine if such person has been or is engaged in any unfair or deceptive act or practice or other contravention of this Act.
>
> (2) For the purpose of this section, the Superintendent or the person or persons whom he may from time to time designate under this section shall be deemed to possess the powers of a commission under The Public Inquiries Act 1971."

You will note that I have added after the words "any unfair or deceptive acts or practice" the words "or other contravention of this Act". I think you will agree that

that logically follows. You will further note that by subsection (2) of my suggestions the Superintendent or person whom he may designate will have the powers of a commission under the Public Inquiries Act. By incorporating the Public Inquiries Act into that subsection you give to the Superintendent some of the powers he needs and all of the machinery that he should adopt to properly investigate such matters. This really then takes the place of Section 3. as well. Consequently Section 3 may not need to be maintained in the Act. I felt it necessary to allow for the appointment of some person or persons other than the Superintendent to carry out the investigation in order to avoid saddling the Superintendent the necessity of personally conducting such investigation or examination.

391. I think the provisions of this section must remain insofar as their intention or spirit are concerned, but be changed so as to update the actual wording in order to allow for a more specific provision as to what the Superintendent is entitled to do once it appears to him that a person is engaged in an unfair or deceptive act or practice or contravention of the Act.

It would seem to me that the Superintendent has a number of avenues of approach available to him, some of which have already been discussed. For instance, once a person is found to be engaged in an unfair or deceptive act or practice, the Superintendent will want to have the power to order that

individual to stop that practice immediately. In addition the Superintendent may wish to revoke that individual's licence and at the same time initiate proceedings in Provincial Judge's Court on the basis that the person's conduct constitutes an offence under The Insurance Act. The proceedings leading up to revocation will have to be governed by the provisions of the sections which we have already discussed in that respect. Of necessity there will have to be a hearing before revocation can come about. Similarily, any charge under the Act dealt with in Provincial Judge's Court will also necessitate a hearing. We are left, therefore, to deal with any "cease and desist order" that the Superintendent may wish to issue and the affect of its not being obeyed. If it appears to the Superintendent to be in the interest of the public he may wish to issue a "cease and desist order" on his own to take effect forthwith and to remain outstanding until such time as a hearing can be held within a reasonable length of time. I would think a period of fifteen days would appear to be reasonable and consistent with similar provisions contained in other Acts. In the event the Superintendent wants a "cease and desist order" but does not think that the public interest is going to be affected to such an extent that the Order would have to be made "ex parte" he would have to make a "charge" or allegation against the person whom he feels is carrying out the unfair or deceptive act or practice and then allow for a full hearing on notice to the individual. The notice would have to of necessity

contain specific details as to the case to be met. The new section would have to provide for all this particularily insofar as it relates to the "cease and desist order".

In addition the Superintendent should have the power and right to move before a Court of Law to obtain an Order or declaration or other form of relief to support his ability to prohibit persons engaging in activities in contravention of the Act. By this I mean an injunction to prohibit a person from engaging in an unfair or deceptive practice or, carrying on any activity in contravention of the Act. This right would have to be superimposed upon any other right allowed for in this section, but it is important to my way of thinking, because without it, the Superintendent may find himself powerless to effectively deal with a person.

392. If my recommendations relating to Section 391. are adopted there would be no reason to maintain this section in the Act.

I would like now to refer to the provisions of Regulation 539.

1. (2) This subsection must be reworded. In its present form it makes no sense. It refers to "subsection (2) of sections 4. and 5....." There is no subsection (2) of sections 4 and 5 in Regulation 539 and accordingly I presume that the subsection is intended to read"sub-section (2) of section 4 and section 5....." In any event I do not understand why subsection (2) of section 4 and section 5 of Regulation 539 should not apply to the holder of an agent's licence for life insurance who does not hold a licence for another class of insurance. From what I can gather my examination into the matter, there is a great deal of misunderstanding about the actual effect of this subsection. It does not seem to be understood by people in the industry to mean as it reads. It seems to be understood to apply to all classes of the holders of licences of all classes of insurance. I cannot think of any reason why these two subsections should not apply to the holder of licences of all classes of insurance.

9. (1) This sub-section provides as follows:

> "A licencee shall not act as a real estate salesman or real estate broker who is not licenced under this Regulation".

I draw your attention to the fact that no person is licenced under Regulation 539. Anyone licenced is licenced under the Act and not the Regulation.

14. I have commented to you about the provisions of section 14. of this Regulation. Refer to my comments concerning Section 342. I do not think that Section 14. should remain in Regulation 539 for the reasons I have suggested above.